IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

FIRST APPEAL NO.813 OF 1987

Dena Bank
Devkaran Nanjee Buildings,
17, Horniman Circle, Bombay ... Appellant

V/s.

W.N. Kochar,
Sole Proprietor of M/s.Consolidated
Trading Corporation, Advani Chambers
Pherozeshah Mehta Road, Bombay -1 ... Respondent

Mr.A.R. bamne for Appellant
Mr.G.S. Hegde with Mr.C.M. Lokesh for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

JUDGMENT RESERVED ON: **OCTOBER 14, 2004**
JUDGEMENT PRONOUNCED ON: **NOVEMBER 25, 2004**

JUDGMENT:

. This Appeal involves the question as to whether the bill of exchange drawn by the Appellant-bank constituted a document against payment or a document against acceptance. According to the appellant, it had purchased the bill of exchange and, therefore, was entitled to the higher amount under the bill of exchange, on devaluation of the Indian Rupee. The respondent, in favour of whom the suit has been decreed, contends that the bank had only discounted the bill and was, therefore, was entitled to profit from the devaluation of the Rupee.

2. The Respondent, a proprietary concern, exported a consignment on 9.12.1965 to a firm in Dubai valued at Pound/Sterling 1389-7s-Od. A bill of exchange was drawn by the respondent in respect of that amount in favour of the firm in Dubai. The due date of the bill of exchange was 7.3.1966 which was extended later by 30 days. According to the appellant, they granted the facility of purchasing the documents against payment (DP) bill under the letter of credit for a maximum of 90 days under the Export Credit & Guarantee Corporation (ECGC) policy for export of cotton goods manufactured in mills to the limit of Rs.2 lacs with 10% margin. According to the appellant, the respondent accepted the terms and conditions of the letter of sanction dated 9.12.1965. The rupee equivalent of the bill of exchange at the then exchange rate was Rs.18,140/- and after deducting 10% as margin money the bank credited a sum of Rs.16,332.60 to the packing credit account of the respondent on 6.1.1966. According to the bank, by doing so, it had become the holder in due course of the bill of exchange and, therefore, was entitled to receive the entire amount on its due date. It appears that although the bank presented the bill of exchange to the foreign buyer for acceptance, it was refused by the foreign buyer. Correspondence ensued between the bank and the

respondent. On 25.4.1966, the respondent requested the bank to extend the period of the bill of exchange from 60 days to 90 days which request was complied with by the bank. The bill of exchange was then accepted by the foreign buyer. However, on the due date, the foreign buyer refused to make payment of the amount of the bill of exchange to the appellant bank on the ground that the goods were lifted without their knowledge. The bank by its letter dated 23.5.1966 informed the respondent about the bill of exchange having been dishonoured by it foreign buyer. The respondent was then called upon by the bank to deposit the entire amount of the bill of exchange at the then prevailing exchange rate. However, on 4.7.1966, the respondent deposited Rs.16332.60 which was credited by the bank to their account. Not being satisfied with this amount, the bank by its letter dated 15.7.1966, claimed from the respondent the entire amount of bill of exchange at the then prevailing exchange rate, i.e., Rs.29,223.56 as the bank contended that the bill of exchange was purchased by it and, therefore, it was entitled to receive the entire amount. On 18.7.1966, the respondent replied to the bank contending that the bank had merely advanced the amount of Rs.16332.60 and therefore, the bank was not entitled to any excess amount on account of the devaluation of the Indian Rupee. On 8.8.1967, the bill of exchange was retired by the foreign buyer and as a result of the

devaluation the bank received Rs.29,176.35 at the then prevailing exchange rate. The respondent by his letter dated 11.8.1967 requested the bank to credit the entire of the amount of Rs.29,176.35 to his account. However, the bank refunded only 16,332.60 alongwith interest from 4.7.1966 to 24.8.1967 and margin money held by them. The bank informed the respondent that he was not entitled to the entire amount of Rs.29,176.35 despite a legal notice sent by the respondent calling upon the bank to pay the entire amount. The bank refused to do so and, therefore, the respondent instituted the present suit on 20.8.1970.

3. The suit was decreed and the bank was directed to pay to the respondent a sum of Rs.13803.84 together with interest on 10854.43 @6% per annum from the date of the suit till payment and costs of the suit.

4. Mr.Bamne, learned counsel appearing for the Bank, submits that the respondent had accepted the terms and conditions of the letter of sanction dated 9.12.1965 under which the bank agreed to purchase document against payment i.e. the DP bill under the letter of credit of the firm contract and DP bills for a maximum of 90 days. According to the learned Counsel, the bank had purchased the foreign bill of exchange and had become holder in due course & therefore, it was entitled to receive the

entire amount on its due date. According to Mr.Bamne, the trial Court has fallen in error by construing the bill of exchange as a discounted bill rather than a bill which was purchased by the bank. He then urges that whether the bill of exchange had been purchased or discounted in law the bank becomes the holder in due course of the bill of exchange, thereby being entitled to receive the entire amount on its due date. The learned Counsel submits that the case before the trial Court was one of the purchase of the bill of exchange and therefore, the bank was entitled to the amount received by them from the drawee at an enhanced rate on account of the devaluation of the rupee.

5. On the other hand, Mr.Hegde, learned Counsel for the Respondent, contends that the bank had only extended the facility of bill discounting under which the bank advanced an amount before the due date of the bill of exchange. He submits that the very fact that security was asked for and taken by the bank before advancing the amount of Rs.16,332.60 is indicative of the fact that the bill of exchange was not produced by the bank but discounted. The learned Counsel submits that the trial Court has considered the effect of bill discounting and bill purchase and has construed the correspondence exchanged between the parties and has arrived at a conclusion that the parties had negotiated the bill

discounting facility and not a purchase facility. He submits that the transaction between the bank and the respondent cannot be equated to that of purchase as a bill discounting facility is not the same as the facility where the bank purchases the bill. According to him, the bank merely acted as an agent and was not the owner of the bill. The Bank had advanced monies against the securities which it asked for from the respondent and which the respondent had provided.

6. The letter of 9.12.1965 under which the bank agreed to make arrangements for the bill of exchange stipulates that arrangement was sanctioned subject to the respondent under the Export Credit & Guarantee Corporation Policy. The arrangement was called packing credit hypothecation. The security advanced was by way of hypothecation of mill-made cotton goods, firm contracts or orders and/or letter of credit which was to be lodged with the bank. The demand promissory note and letter of continuity was jointly and severally executed by the borrower and the proprietor of the firm personally. Accordingly, the bank complied with the necessary formalities and made arrangements to advance Rs.16332.60 to the respondent as the amount against the bill of exchange. The other documents on record indicate that the bank had merely discounted the bill of exchange and had not purchased it as contended by the

bank. If this contention of the bank was correct, that it had purchased the bill, there was no need for the bank to seek any security from the respondent. The bank also would not have then corresponded with the respondent regarding the failure of the drawee to accept the bill of exchange.

7. The Black's Law Dictionary, 7th Edition defines 'discount' as follows:

> **discount,** n.1. A reduction from the full amount or value of something, esp. a price. 2. An advance deduction of interest when a person lends money on a note, bill of exchange, or other commercial paper, resulting in its present value. See PRESENT VALUE. 3. The amount by which a security's market value is below its face value.

8. The bill of exchange which we are concerned with certainly constitutes advance deduction of interest when a person lends money on a note or bill of exchange, the bank had advanced Rs.16,632.60 against the bill of exchange to the respondent and, therefore, could not claim that as a purchase. The bank could not claim to be the holder in due course of the bill of exchange.

9. The trial Court has rightly come to the conclusion that the transaction between the bank and the respondent could not be that of sale and purchase of DP bill but was of discounting of bills. On a

consideration of the evidence before it, the trial Court has come to the conclusion that the stand of the bank was not bonafide and that the bank was not entitled to the excess amount after the rupee was devalued.

10. The drawee had not retired the bill on the due date and therefore, the bank had requested the plaintiff that is the respondent herein to reverse the transaction pursuant to which the respondent had deposited an amount of Rs.16332.60 which was advanced to him by the bank. Had there been a purchase of the bill of exchange, the question of seeking a reversal of the transaction from the respondent would not have arisen. These are the factors which indicate that the transaction between the parties was of bill discounting and not of purchase. The trial Court has rightly construed all the documentary evidence on record and has arrived at the conclusion that the bank was liable to pay Rs.13803.84 together with interest on Rs.10854.43 which was the principal amount which the respondent was entitled to on account of the devaluation of the rupee.

11. First Appeal dismissed. No order as to costs.

12. Certified copy expedited.

GPN-J-602-ARHCB-12-97-31,000-PA4 [Spl.-H.C.A.S.D.D. 28e. G.R., J.D., No.4398, dated 3-7-16

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

FIRST APPEAL NO.813 OF 1987

Date of Decision: NOVEMBER __, 2004

Transcript of JUDGMENT submitted on:

For Approval and Signature:-

THE HON'BLE **SMT. JUSTICE NISHITA MHATRE**

1. Whether Reporters of Local Papers may be allowed to see the Judgment?)

2. To be referred to the Reporters or not?)

3. Whether Her Ladyship wishes to see the fair copy of the Judgment?)

4. Whether this case involves a substantial question of law as to the interpretation?)

5. Whether it is to be circulated to the Civil Judges?)

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to the Nagpur, Aurangabad & Goa offices?)

FOR INFORMATION TO:

The Hon'ble Shri/Smt.Justice

(Vishwanath Sherla)

P.A. to the Hon’ble
Smt.Justice Nishita Mhatre